

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERBERT M. FRENKEL and SOCIAL SECURITY ADMINISTRATION,
OFFICE OF HEARINGS & APPEALS, New York, NY

*Docket No. 99-2421; Submitted on the Record;
Issued December 4, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met his burden of proof in establishing a recurrence of disability causally related to his accepted employment-related condition of aggravation of coronary and carotid artery disease and hypertension.

The Board has duly reviewed the record on appeal and finds that the case is not in posture for decision.

Appellant, an administrative law judge, filed a claim alleging that on May 30, 1982 he became aware that his atherosclerotic coronary heart disease, peripheral and cerebral vascular disease, degenerative joint disease, essential hypertension, hyperlipidemia, vertigo and diabetes mellitus were attributable to stress in the performance of his duties. Appellant did not stop work.

The Office of Workers' Compensation Programs accepted appellant's claim for aggravation of coronary and carotid artery disease and hypertension on January 16, 1998. Appellant filed a notice of recurrence of disability on November 27, 1998, the date of his retirement, and indicated that he stopped work on November 13, 1998 due to his accepted employment-related conditions. The Office denied appellant's claim for a recurrence of disability by decision dated June 16, 1999.

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between his recurrence of disability commencing November 13, 1998 and his employment injury.¹ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate

¹ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.²

In this case, the Office accepted appellant's claim for aggravation of coronary and carotid artery disease and hypertension. The Office based its acceptance on the report of Dr. A. Lee Winston, a Board-certified internist and second opinion physician, who opined on October 22, 1997 that appellant's overall condition was aggravated by his work and the need to travel.

In a report dated December 7, 1998, Dr. Alan J. Friedman, a Board-certified ophthalmologist, diagnosed branch retinal artery occlusion secondary to carotid artery disease. He stated that appellant had complete occlusion of the left carotid artery resulting in loss of vision. Dr. Friedman added that the highly stressful nature of appellant's work environment was a causal factor in exacerbating his cardiac/carotid disease and subsequently his retinal artery occlusion. He opined that appellant was totally disabled due to visual impairment.

In his January 19, 1999 report, Dr. Joseph Tenenbaum, a Board-certified internist and appellant's attending physician, diagnosed fatigue, reduced ability to ambulate, burning in the balls of his foot, pains in thumbs. Dr. Tenenbaum stated that appellant had definite symmetric peripheral neuropathy most likely secondary to diabetes. He further stated that carotid and vertebral duplex doppler studies on December 11, 1998 disclosed probable complete occlusion of the left internal carotid artery and normal flow in the right internal carotid. An eye examination on November 5, 1998 revealed reduction in visual facility, greater on the left than the right.

These reports contain a history of injury, diagnosis and an opinion that appellant's accepted employment-related aggravation has resulted in a loss of vision due to complete occlusion of the left internal carotid artery. The reports further indicate that appellant's recurrence of disability in November 1998 was due in part to his inability to read as a consequence of loss of vision. While these reports are not sufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between appellant's accepted employment condition and his recurrence of disability on November 13, 1998 and are sufficient to require the Office to undertake further development of appellant's claim.³

On May 11, 1998 Dr. Winston stated that stress at work had aggravated appellant's abdominal aortic aneurysm resulting in the loss of parts of his toes. On June 20, 1998 Dr. Tenenbaum attributed appellant's toe amputations to his work-related conditions. The Office did not issue a final decision addressing this issue. The Board, therefore, will not consider this issue on appeal.⁴

On remand the Office should refer appellant, a statement of accepted facts and a list of specific questions to an appropriate physician to determine the causal relationship between

² See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

³ *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

⁴ 20 C.F.R. § 501.2(c).

appellant's accepted aggravation of coronary and carotid artery disease and his current disability due to loss of vision. After this and such other development as the Office deems necessary, the Office should issue an appropriate decision.

The June 16, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further development consistent with this opinion.

Dated, Washington, DC
December 4, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member